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November 8, 2011

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, DISH Network, LLC
CG Docket No. 11-50
Petition for Declaratory Ruling Concerning The Telephone
Consumers Protection Act (TCPA)

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on November 4, 2011, DISH Network LLC ("DISH Network") met with Mark Stone, Chief of Staff, Commissioner Michael Copps, in connection with the proceeding identified above: In attendance on behalf of DISH Network were Jeffrey Blum, Senior Vice President and Deputy General Counsel, Alison Minea, Corporate Counsel; and Alysia Z. Hutnik, Kelley Drye & Warren LLP.

During the meeting, and consistent with its comments and reply comments filed in this proceeding, DISH Network encouraged the FCC to conclude that the TCPA does not hold businesses liable for unlawful telemarketing calls that are initiated or made by independent third parties. These arguments were consistent with those provided at pages 12-16 of DISH Network's May 4, 2011 Comments in this proceeding.

DISH Network further added that, alternatively, if the FCC were to conclude that the TCPA did provide for some type of third party liability, in such a situation, the federal common law of agency is the governing standard for determining how to apply such third party liability to a given set of facts. The federal common law of agency test involves a list of factors, but primarily focuses on whether the principal directed and controlled the manner and means of

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
November 8, 2011
Page 2

the agent's conduct at issue to thus be legally responsible for such conduct. The U.S. Supreme Court's decision in *Community for Creative Non-Violence v. Reid* ("CCNV") sets forth the factors to be considered.

DISH Network urged the Commission to cite the CCNV factors and to clearly state that liability could attach only if the alleged principal directed and controlled the purported violative conduct. Such an outcome would provide the necessary clarity for businesses operating nationwide and would maintain the consumer protection aims of the TCPA.

During the meeting, DISH Network also discussed its reaction to recent *ex parte* filings submitted by the Federal Trade Commission ("FTC") on October 20, 2011 and U.S. Department of Justice ("DOJ") on October 26, 2011. This discussion was consistent with the *ex parte* notice filed by DISH Network on November 3, 2011. As is more fully explained in that notice, DISH Network explained that the existing federal common law of agency is sufficient to provide the needed uniformity and predictability for telemarketers and consumers. The FCC should not create a new standard, as urged by the FTC and DOJ, because such a deviation from federal common law would lead to more litigation, not less, and likely would lead to future referrals to the Commission to explain the new standard.

DISH Network further stated that the CCNV factors do not need additional explanation in the telemarketing context. If the Commission were to entertain the DOJ's suggestion, it should confine its discussion to factors which restate the agency principles outlined in CCNV. It should not adopt factors which establish FCC-specific standards or which subject telemarketers to strict liability for the actions of third parties not under their direction and control.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is fluid and cursive, with the first name "Steven" and last name "Augustino" clearly legible.

Steven A. Augustino

SAA:pab

cc: Mark Stone